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Attorneys for Purple Innovations, LLC

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**PURPLE INNOVATIONS, LLC, A
Delaware limited liability company,**

Plaintiff,

v.

**HONEST REVIEWS, LLC, a Florida
Corporation, RYAN MONAHAN, an
individual, and GHOSTBED, a
Delaware corporation,**

Defendants.

**MOTION FOR EXPEDITED HEARING
SETTING ON MOTION FOR
TEMPORARY RESTRAINING ORDER**

Case No.: 2:17-cv-00138-DB

Honorable Dee Benson

Plaintiff Purple Innovations, LLC (“Plaintiff” or “Purple”), by and through its counsel of record MAGLEBY CATAXINOS & GREENWOOD (“MCG”), respectfully moves the Court for an expedited hearing on its Motion for Temporary Restraining Order (the “TRO Motion”). [Doc. No. 8].

INTRODUCTION

By this motion, Plaintiff requests the Court set a date and time for a hearing on the TRO Motion and issue a directive to Purple to provide notice to the Defendants of the hearing date and time, by all reasonable means. Purple requests the Court hold the hearing as scheduled, or the soonest possible time thereafter, upon submission by Purple to the Court of satisfactory evidence that one or more of the Defendants have notice of the hearing.

STATUS OF SERVICE UPON AND NOTICE TO DEFENDANTS

Since filing the TRO Motion on Monday, February 27, 2017, Purple has made numerous attempts to serve and otherwise provide notice of these proceedings, including the TRO Motion, to Defendants Honest Mattress Reviews, LLC (“HMR”), Ryan Monahan (“Monahan”), and GhostBed, Inc. (“GhostBed”).

These efforts have been detailed in the two declarations submitted in this matter by James E. Magleby, counsel for Purple. [Doc. Nos. 11-2, 12].

Since those declarations were submitted, numerous additional – and successful – efforts have been made to provide notice. These efforts are detailed in the contemporaneously filed third declaration of James E. Magleby, which is also attached hereto as Exhibit “1.”

In addition, it is clear that Defendants are now avoiding service, as also detailed in the third declaration, and including the following:

- (i) An attempt to serve GhostBed at its headquarters in Florida during business hours on February 28, 2017, where a person identified as a

“manager” refused to take the papers, left the lobby, and then failed to return; and on March 1, 2017, when the doors were locked and personnel were visible inside the business but refused to come to the door;

- (ii) An attempt to serve Monahan (who is also the registered agent for “HMR”) at his personal address in Boca Raton, Florida, on two occasions during the evening of Tuesday, February 28, 2017, where no one would answer the door;
- (iii) An attempt to serve HMR and/or Monahan at its business address during business hours on February 28, 2017 and March 1, 2017, where the doors were locked and personnel were visible inside the business but refused to come to the door.

As also detailed in the third declaration, since sending the letter to Defendants on February 28, 2017, with the address for the FTP site where the filed documents can be located, MCG has received reports indicating that the FTP site has been accessed multiple, additional times on March 1, 2017, all from IP addresses that appear to be located in Florida. MCG has also received notice that the Federal Express packages sent to Defendants have been delivered and recorded as having been accepted at the business locations of GhostBed and HMR.

As of this writing, GhostBed is the only defendant that has been formally served with process and the additional papers in this case. GhostBed was served through its registered agent in Wilmington, Delaware. A return of service will be filed with the Court as soon as it is received. Despite having been served, no lawyer has entered an

appearance on GhostBed's behalf, and no one has contacted MCG on behalf of GhostBed.

CONCLUSION

Because Purple has made diligent efforts to serve Defendants and notify them of these proceedings, because it appears that some or all of the Defendants now at least have notice of the proceedings but appear to be evading service, and because Purple is suffering irreparable harm, Purple respectfully requests that an expedited hearing be scheduled at the Court's earliest convenience.

DATED this 1st day of March, 2017.

MAGLEBY CATAXINOS & GREENWOOD

/s/ James E. Magleby

James E. Magleby

Christine T. Greenwood

Adam Alba

Attorneys for Plaintiff Purple Innovations, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MAGLEBY CATAXINOS & GREENWOOD, 170 South Main Street, Suite 1100, Salt Lake City, Utah 84101, and that pursuant to Rule 5 of the Federal Rules of Civil Procedure, I am attempting to serve a true and correct copy of the foregoing **MOTION FOR EXPEDITED HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER** upon the following via electronic mail and U.S. mail this 1st day of March, 2017:

HONEST MATTRESS REVIEWS
hello@honestmattressreviews.com
marketing@ghostbed.com
900 North Federal HWY
Suite 220
Boca Rotan, Florida 33432

Ryan Monahan
hello@honestmattressreviews.com
marketing@ghostbed.com
10432 Plaza Centro
Boca Raton, Florida 33498

GHOSTBED
marc@naturessleep.com
7143 West Broward Blvd.
Plantation, Florida 33317

/s/ Janae Kidd

Exhibit “1”

James E. Magleby (7247)

magleby@mcgiplaw.com

Christine T. Greenwood (8187)

greenwood@mcgiplaw.com

Adam Alba (13128)

alba@mcgiplaw.com

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Attorneys for Purple Innovations, LLC

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

**PURPLE INNOVATIONS, LLC, A
Delaware limited liability company,**

Plaintiff,

v.

**HONEST REVIEWS, LLC, a Florida
Corporation, RYAN MONAHAN, an
individual, and GHOSTBED, a
Delaware corporation,**

Defendants.

**THIRD DECLARATION OF JAMES E.
MAGLEBY IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER**

Case No.: 2:17-cv-00138-DB

Honorable Dee Benson

I, James E. Magleby, hereby declare as follows:

1. I am over 21 years of age and have personal knowledge of the facts set forth in this Declaration. If asked to testify, I could and would testify as to the matters set forth below.

1. I am lead counsel of record for Purple Innovations, LLC ("Purple") in the above-captioned case.

2. On February 24, 2017, Purple filed a complaint in this Court, bringing a number of claims against Defendants. [See Doc. No. 2].

3. Purple filed its Motion for Temporary Restraining Order (“Motion for TRO”), on February 27, 2017, [see Doc. No. 8], and its Supplemental Memorandum in Support of Motion for Temporary Restraining Order on February 28, 2017. [See Doc. No. 11].

4. As described in my Second Declaration in Support of Motion for Temporary Restraining Order filed on February 28, 2017 (“Second Declaration”), Purple has made numerous efforts to notify defendants of this lawsuit and Purple’s requested relief. [See Doc. No. 12].

5. I submit this Third Declaration in Support of Motion for Temporary Restraining Order to provide the Court with additional information concerning Purple’s efforts to give Defendants notice.

6. As noted in my Second Declaration, Purple sent Defendants a letter with an FTP link from which Defendants can access the relevant papers in this case. [See Doc. No. 12].

7. I have received notification that the letter was delivered to GhostBed at 10:44 a.m. MST. [See FedEx Notification, attached as Exhibit A].

8. I have received notification that the letter was delivered to Honest Mattress Reviews at 2:03 p.m. MST. [See FedEx Notification, attached as Exhibit B].

9. As described in my Second Declaration, an individual in Florida near where the Defendants are located accessed the relevant documents from the FTP site. [See Doc. No. 12 at ¶¶ 8-10].

10. I have received additional notifications today demonstrating that the documents from the FTP site were again downloaded multiple times today, at approximately 10:48 a.m. MST and later in the afternoon. [See March 1, 2017 Email Notifications, collectively attached as Exhibit C].

11. The information publicly available concerning the IP Address from which the documents were downloaded at 10:48 a.m. suggests that the documents were downloaded by an individual at “Werner Media Partners, LLC dba Nature Sleep” located in Florida, which is a business with or near the same address as Defendant GhostBed. [See 3-21-17 IP Search, attached as Exhibit D].

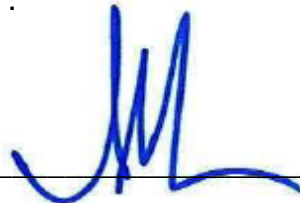
12. The download of the documents today was not by anyone at our law firm. The FTP link is not publicly available, and there would be no reason or ability for anyone other than one of the recipients of my letter to have access the FTP site.

13. Additionally, I have been informed that GhostBed was served with a copy of the Complaint and the Motion for TRO today at in Delaware.

14. I have been informed by the process servers that when the servers attempted service at the business addresses for GhostBed, Inc. and Honest Reviews, LLC, at their Florida locations, the doors were locked, and although people were observed inside, they refused open the doors. Declarations regarding these service attempts will be filed with the Court as soon as they are available.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 1st day of March, 2017.

A handwritten signature in blue ink, consisting of stylized initials 'JM' followed by a horizontal line.

James E. Magleby

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MAGLEBY CATAXINOS & GREENWOOD, 170 South Main Street, Suite 1100, Salt Lake City, Utah 84101, and that pursuant to Rule 5 of the Federal Rules of Civil Procedure, I am attempting to serve a true and correct copy of the foregoing **THIRD DECLARATION OF JAMES E.**

MAGLEBY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

upon the following via electronic mail and U.S. mail this 1st day of March, 2017:

HONEST MATTRESS REVIEWS
hello@honestmattressreviews.com
marketing@ghostbed.com
900 North Federal HWY
Suite 220
Boca Rotan, Florida 33432

Ryan Monahan
hello@honestmattressreviews.com
marketing@ghostbed.com
10432 Plaza Centro
Boca Raton, Florida 33498

GHOSTBED
marc@naturessleep.com
7143 West Broward Blvd.
Plantation, Florida 33317

/s/ Zoe Perry_____

Exhibit “A”

Your package has been delivered

Tracking # 778535317616

Ship date:

Tue, 2/28/2017

James E. Magleby

Magleby Cataxinos &
Greenwood
Salt Lake City, UT 84101
US



Delivered

Delivery date:

Wed, 3/1/2017 12:44
pm

Marc L. Werner

GHOSTBED
7143 West Broward Blvd.
PLANTATION, FL 33317
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: [778535317616](#)

Status: Delivered: 03/01/2017 12:44
PM Signed for By:
S.GRJIFFITM

Reference: Purple v. Honest

Signed for by: S.GRJIFFITM

Delivery location: PLANTATION, FL

Delivered to: Receptionist/Front Desk

Service type: FedEx First Overnight

Packaging type: FedEx Envelope


Number of pieces: 1

Weight: 0.50 lb.

Special handling/Services: Deliver Weekday

Standard transit: 3/1/2017 by 8:00 am



 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 11:47 AM CST on 03/01/2017.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

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Thank you for your business.

Exhibit “B”

Your package has been delivered

Tracking # 778535849843

Ship date:

Tue, 2/28/2017

Adam Alba

Magleby Cataxinos &
Greenwood
Salt Lake City, UT 84101
US



Delivered

Delivery date:

Wed, 3/1/2017 4:03 pm

Ryan Monahan

Honest Mattress Reviews
900 North Federal HWY Suite
220
BOCA RATON, FL 33432
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: [778535849843](#)

Status: Delivered: 03/01/2017 4:03 PM
Signed for By: D.BRYAN

Reference: Purple v. Honest

Signed for by: D.BRYAN

Delivery location: BOCA RATON, FL

Delivered to: Receptionist/Front Desk

Service type: FedEx First Overnight

Packaging type: FedEx Envelope


Number of pieces: 1

Weight: 0.50 lb.

Special handling/Services: Deliver Weekday

Standard transit: 3/1/2017 by 8:00 am



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All weights are estimated.

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Thank you for your business.

Exhibit “C”



ACTIVITY ALERT FOR:

Greg Wayment



Path Read (03/01/17 - 12:48 PM | wayment | 199.27.243.194)

Path: [/Purple v. Honest Reviews/2-27-17 Proposed Temporary Restraining Order -- Purple Innovation v. Honest Reviews.pdf](#)

help@itnow.net

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ACTIVITY ALERT FOR:

Greg Wayment



Path Read (03/01/17 - 12:48 PM | wayment | 199.27.243.194)

Path: [/Purple v. Honest Reviews/2-24-17 \[2\] Complaint and Jury Demand -- Purple v. Honest Reviews.pdf](#)

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ACTIVITY ALERT FOR:

Greg Wayment



Path Read (03/01/17 - 3:26 PM | wayment | 8.21.129.12)

Path: [/Purple v. Honest Reviews/2-27-17 TRO Motion -- Purple Innovations v. Honest Reviews.pdf](#)

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ACTIVITY ALERT FOR:

Greg Wayment



Path Read (03/01/17 - 3:17 PM | wayment | 8.21.129.12)

Path: [/Purple v. Honest Reviews/2-24-17 \[2\] Complaint and Jury Demand -- Purple v. Honest Reviews.pdf](#)

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ACTIVITY ALERT FOR:

Greg Wayment



Path Read (03/01/17 - 3:51 PM | wayment | 50.192.138.246)

Path: [/Purple v. Honest Reviews/2-24-17 \[2\] Complaint and Jury Demand -- Purple v. Honest Reviews.pdf](#)

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Exhibit “D”

WHOIS-RWS

Network	
Net Range	199.27.240.0 - 199.27.247.255
CIDR	199.27.240.0/21
Name	FPL-FIBERNET-CUSTOMER-4
Handle	NET-199-27-240-0-1
Parent	NET199 (NET-199-0-0-0-0)
Net Type	Direct Allocation
Origin AS	AS33132
Organization	FPL FiberNet, LLC (FPLFI)
Registration Date	2010-09-03
Last Updated	2012-02-24
Comments	
RESTful Link	https://whois.arin.net/rest/net/NET-199-27-240-0-1
See Also	Related POC records.
See Also	Related organization's POC records.
See Also	Related delegations.

Network	
Net Range	199.27.243.192 - 199.27.243.207
CIDR	199.27.243.192/28
Name	FPLFI-WERNERMEDI-DIA-118790-1
Handle	NET-199-27-243-192-1
Parent	FPL-FIBERNET-CUSTOMER-4 (NET-199-27-240-0-1)
Net Type	Reassigned
Origin AS	
Organization	Werner Media Partners, LLC dba Nature Sleep (WMPLDNS-1)
Registration Date	2016-02-19
Last Updated	2016-02-19
Comments	
RESTful Link	https://whois.arin.net/rest/net/NET-199-27-243-192-1
See Also	Related POC records.
See Also	Related organization's POC records.
See Also	Related delegations.

